

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant v. Lea's Party Rentals, Inc. Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100366.

**AFFIRMATION BY THE CHIEF ADMINISTRATIVE HEARING OFFICER
OF THE ADMINISTRATIVE LAW JUDGE'S ORDER DENYING
COMPLAINANT'S MOTION FOR DEFAULT**

On December 11, 1989, the Honorable Robert B. Schneider, the Administrative Law Judge assigned to this proceeding by the Chief Administrative Hearing Officer issued an Order entitled, ``Order Denying Complainant's Motion for Default.'' The Complainant, on December 20, 1989, filed a request for review with the Chief Administrative Hearing Officer.

Pursuant to Title 8 U.S.C. 1324a(e)(7) and 28 C.F.R. 68.51, the Chief Administrative Hearing Officer upon review of the Administrative Law Judge's Order and in accordance with the controlling section of the Immigration Reform and Control Act of 1986 (hereinafter IRCA), affirms the Administrative Law Judge's Order.

On July 31, 1989, the United States of America, by and through its agency the Immigration and Naturalization Service (hereinafter the INS) filed a complaint with the Office of the Chief Administrative Hearing Officer against the Respondent, Lea's Party Rentals, Inc. (hereinafter Lea's). The INS charged Lea's with eighteen violations of IRCA. The INS alleged seventeen violations of 8 U.S.C. 1324a(a)(1)(B) and/or 1324a(b)(3) for failure to comply with the verification requirements and/or retain and make available the Employment Eligibility Verification Forms (Form I-9). The INS also alleged one violation of 8 U.S.C. 1324a(a)(1)(B) for failure to properly complete Section 2 of the Form I-9.

On August 14, 1989, Respondent received the Notice of Hearing by certified mail. On September 7, 1989, the Respondent, proceeding pro se, filed a pleading entitled, ``Amendment to May 9, 1989 Request for Hearing Before Administrative Law Judge.'' On September 8, 1989, the Administrative Law Judge issued an Order Directing Respondent to File an Answer by September 22, 1989 in

which he stated, ``[t]hough inadequate as a formal answer, I take Respondent's letter to be a pro se attempt to contest the factual allegations that serve as the basis for the Complaint.'' (Administrative Law Judge's Order Directing Respondent to File an Answer at p. 1.)

As of September 26, 1989, Respondent had not replied to the Administrative Law Judge's Order and the INS filed a Motion for Default Judgment. On October 6, 1989 Respondent, through counsel, filed an Answer, an Attorney's Declaration in Opposition to Motion for Default Judgment and a Response in Opposition to Motion for Default Judgment. Included in these documents were a request to late file, the denial or admission of all allegations and an explanation for Respondent's failure to file an adequate Answer in timely manner.

The entering of a default judgment is a discretionary matter pursuant to 28 C.F.R. 68.8(b). That regulation provides that, ``[t]he Administrative Law Judge may enter a judgment by default.'' Based on the record of this proceeding there is no indication that the Administrative Law Judge acted in an arbitrary or capricious manner, nor that he acted contrary to the rules and regulations governing this proceeding and its participants. Therefore, the Administrative Law Judge did not abuse his discretion in denying Complainant's Motion for Default Judgment.

Accordingly, pursuant to 8 U.S.C. 1324a(e)(7) the Chief Administrative Hearing Officer, after careful consideration and review, affirms the Administrative Law Judge's Order entitled, ``Order Denying Complainant's Motion for Default'' of December 11, 1989.

SO ORDERED.

Date January 9, 1990

RONALD J. VINCOLI
Acting Chief Administrative Hearing Officer